

search organized and operated under the laws of the United States or any State.

(b) The provisions of this subchapter applicable to the order issued under section 4533(b) of this title shall be applicable to any amendment to the order.

(Pub. L. 98-180, title I, §137, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1372.)

## CHAPTER 77—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

- |        |   |
|--------|---|
| Sec.   |   |
| 4601.  | Congressional findings and statement of purpose.  |
| 4602.  | Definitions.  |
| 4603.  | Honey research, promotion, and consumer information order.  |
| 4604.  | Notice and hearing.   |
| 4605.  | Findings and issuance of order.   |
| 4606.  | Required terms of order. <ul style="list-style-type: none"> <li>(a) Terms and conditions of order.</li> <li>(b) National Honey Nominations Committee; composition; nominations; terms; Chairman; compensation; meetings; voting.</li> <li>(c) Honey Board; membership; terms; alternates; compensation; powers; duties.</li> <li>(d) Budget; administration of order.</li> <li>(e) Assessment; collection; rate; exemption; effect of exemption on referendum voting status.</li> <li>(f) Funds; use of; reimbursement; Secretary.</li> <li>(g) False or unwarranted claims or statements.</li> <li>(h) Influencing governmental policy or action.</li> <li>(i) Plans or projects; contracts.</li> <li>(j) Books and records; reports.</li> <li>(k) Honey Board; property interests.</li> </ul> |
| 4607.  | Permissive terms and provisions.  |
| 4608.  | Collection of assessments; refunds. <ul style="list-style-type: none"> <li>(a) First handler of honey.</li> <li>(b) Records.</li> <li>(c) Time for payment; remission.</li> <li>(d) Loan and loan deficiency payments; deduction from disbursement of loan funds or loan deficiency payment made to producer.</li> <li>(e) Producer-packers.</li> <li>(f) Inspection; books and records.</li> <li>(g) Confidentiality of information; disclosure.</li> <li>(h) Refunds; submission of statement regarding amount of assessment deducted from loan funds to Honey Board; compliance.</li> <li>(i) Producer liability to Honey Board for payment of assessment.</li> </ul>  |
| 4609.  | Petition and review. <ul style="list-style-type: none"> <li>(a) Filing of petition; hearing.</li> <li>(b) District court; jurisdiction; review; rulings.</li> </ul>   |
| 4610.  | Enforcement. <ul style="list-style-type: none"> <li>(a) District courts; jurisdiction; Attorney General.</li> <li>(b) Civil penalties; notice and hearing; review; courts of appeals; cease and desist orders; failure to obey; Attorney General.</li> </ul>  |
| 4610a. | Investigations and power to subpoena. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Power to subpoena.</li> <li>(c) Aid of courts.</li> <li>(d) Contempt.</li> <li>(e) Process.</li> </ul>  |

Sec.

- |       |  |
|-------|--|
| 4611. | Requirements of referendum.  |
| 4612. | Suspension and termination. <ul style="list-style-type: none"> <li>(a) Authority of Secretary.</li> <li>(b) Referendum; time for conducting by Secretary; alternate referendum conducted by Secretary.</li> <li>(c) Honey Board; referendum; request.</li> <li>(d) Marketing year; termination or suspension at end of.</li> </ul> |

### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1446h of this title.

## § 4601. Congressional findings and statement of purpose

The Congress finds that:

(1) Honey is produced by many individual producers in every State in the United States.

(2) Honey and honey products move in large part in the channels of interstate and foreign commerce, and honey which does not move in such channels directly burdens or affects interstate commerce.

(3) In recent years, large quantities of low-cost, imported honey have been brought into the United States, replacing domestic honey in the normal trade channels.

(4) The maintenance and expansion of existing honey markets and the development of new or improved markets or uses are vital to the welfare of honey producers and those concerned with marketing, using, and processing honey, along with those engaged in general agricultural endeavors requiring bees for pollinating purposes.

(5) The honey production industry within the United States is comprised mainly of small- and medium-sized businesses.

(6) The development and implementation of coordinated programs of research, promotion, and consumer education necessary for the maintenance of markets and the development of new markets have been inadequate.

(7) Without cooperative action in providing for and financing such programs, honey producers, honey handlers, wholesalers, and retailers are unable to implement programs of research, promotion, and consumer education necessary to maintain and improve markets for these products.

(b)(1)<sup>1</sup> It is, therefore, the purpose of this chapter to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective and coordinated program of research, promotion, and consumer education designed to strengthen the position of the honey industry in the marketplace and maintain, develop, and expand markets for honey and honey products.

(2) Nothing in this chapter may be construed to dictate quality standards for honey, provide for control of its production, or otherwise limit the right of the individual honey producer to produce honey. This chapter treats foreign producers equitably, and nothing in this chapter may be construed as a trade barrier to honey produced in foreign countries.

<sup>1</sup> So in original. No subsec. (a) has been enacted.

(Pub. L. 98-590, §2, Oct. 30, 1984, 98 Stat. 3115.)

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-624, title XIX, §1981, Nov. 28, 1990, 104 Stat. 3904, provided that: "This chapter [chapter 1 (§§1981-1987) of subtitle F of title XIX of Pub. L. 101-624, enacting section 4610a of this title, amending sections 4602, 4606, 4608, and 4612 of this title, and enacting provisions set out as a note under section 4603 of this title] may be cited as the 'Honey Research, Promotion, and Consumer Information Act Amendments of 1990'."

SHORT TITLE

Section 1 of Pub. L. 98-590 provided that: "This Act [enacting this chapter] may be cited as the 'Honey Research, Promotion, and Consumer Information Act'."

**§ 4602. Definitions**

As used in this chapter:

(1) The term "honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

(2) The term "honey products" means products produced, in whole or part, from honey.

(3) The term "Secretary" means the Secretary of Agriculture.

(4) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(5) The term "producer" means any person who produces honey in the United States for sale in commerce.

(6) The term "handler" means any person who handles honey.

(7) The term "handle" means to sell, package, or process honey.

(8) The term "importer" means any person who imports honey or honey products into the United States or acts as an agent, broker, or consignee for any person or nation that produces honey outside of the United States for sale in the United States and who is listed in the import records as the importer of record for such honey or honey products.

(9) The term "producer-packer" means any person who is both a producer and handler of honey.

(10) The term "promotion" means any action, including paid advertising, pursuant to this chapter, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

(11) The term "research" means any type of research designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

(12) The term "consumer education" means any action to provide information on the usage and care of honey or honey products.

(13) The term "marketing" means the sale or other disposition in commerce of honey or honey products.

(14) The term "Committee" means the National Honey Nominations Committee provided for under section 4606(b) of this title.

(15) The term "Honey Board" means the board provided for under section 4606(c) of this title.

(16) The term "State association" means that organization of beekeepers in a State

which is generally recognized as representing the beekeepers of that State.

(17) The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(18) The term "exporter" means any person who exports honey or honey products from the United States.

(Pub. L. 98-590, §3, Oct. 30, 1984, 98 Stat. 3116; Pub. L. 101-624, title XIX, §1982, Nov. 28, 1990, 104 Stat. 3904.)

AMENDMENTS

1990—Par. (8). Pub. L. 101-624, §1982(1), substituted "or acts" for "or who acts", and inserted before period at end "and who is listed in the import records as the importer of record for such honey or honey products".

Par. (18). Pub. L. 101-624, §1982(2), added par. (18).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1446h of this title.

**§ 4603. Honey research, promotion, and consumer information order**

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and, from time to time, amend orders applicable to persons engaged in the production, sale, or handling of honey and honey products in the United States and the importation of honey and honey products into the United States.

(Pub. L. 98-590, §4, Oct. 30, 1984, 98 Stat. 3116.)

CONFORMING AMENDMENT TO ORDER

Pub. L. 101-624, title XIX, §1987, Nov. 28, 1990, 104 Stat. 3908, provided that: "Notwithstanding any provision of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq.), the Secretary of Agriculture, after notice and opportunity for public comment, shall issue an amendment to the order in effect under such Act on the date of the enactment of this Act [Nov. 28, 1990] to conform such order to the amendments made by this subtitle [subtitle F (§§1981-1989) of title XIX of Pub. L. 101-624, enacting section 4610a of this title and amending sections 1787, 4602, 4606, 4608, and 4612 of this title], which shall become effective on the date of the publication of such amendment to the order in the Federal Register without a referendum thereon (except for the referendum specifically provided for under section 1985 [amending section 4612 of this title]). The Secretary shall issue such amendment to the order in final form not later than 150 days after the date of the enactment of this Act."

**§ 4604. Notice and hearing**

Whenever the Secretary has reason to believe that the issuance of an order will assist in carrying out the purpose of this chapter, the Secretary shall provide due notice of and opportunity for a hearing upon a proposed order. Such hearing may be requested and a proposal for an order submitted by any organization or interested person affected by the provisions of this chapter.

(Pub. L. 98-590, §5, Oct. 30, 1984, 98 Stat. 3117.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4605 of this title.

**§ 4605. Findings and issuance of order**

After notice of and opportunity for a hearing has been provided in accordance with section 4604 of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, that, upon the evidence introduced at such hearing, the issuance of such order and all the terms and conditions thereof will assist in carrying out the purpose of this chapter.

(Pub. L. 98-590, §6, Oct. 30, 1984, 98 Stat. 3117.)

**§ 4606. Required terms of order****(a) Terms and conditions of order**

Any order issued by the Secretary under this chapter shall contain the terms and conditions described in this section and, except as provided in section 4607 of this title, no others.

**(b) National Honey Nominations Committee; composition; nominations; terms; Chairman; compensation; meetings; voting**

(1) Such order shall provide for the establishment and appointment by the Secretary of a National Honey Nominations Committee which shall consist of not more than one member from each State, from nominations submitted by each State association. If a State association does not submit a nomination, the Secretary may provide for nominations from that State to be made in a different manner, except that if a State which is not one of the top twenty honey-producing States in the United States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(2) Members of the Committee shall serve for three-year terms with no member serving more than two consecutive three-year terms, except that the initial appointments to the Committee shall be staggered with an equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(3) The Committee shall select its Chairman by a majority vote.

(4) The members of the Committee shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee.

(5) The Committee shall nominate the members and alternates of the Honey Board and submit such nominations to the Secretary. In making such nominations, the Committee shall meet annually, except that after the first annual meeting, when determined by the Chairman, the Committee may conduct its business by mail ballot in lieu of an annual meeting. In order to nominate members to the Honey Board, at least 50 per centum of the members from the twenty leading honey producing States must vote. A majority of the National Honey Nominations Committee shall constitute a quorum for voting at an annual meeting. In the case of a mail ballot, votes must be received from a majority of the Committee.

**(c) Honey Board; membership; terms; alternates; compensation; powers; duties**

(1) The order described in subsection (a) of this section shall provide for the establishment and

appointment by the Secretary of a Honey Board in accordance with this subsection.

(2) The membership of the Honey Board shall consist of—

(A) seven members who are honey producers appointed from nominations submitted by the National Honey Nominations Committee, one from each of seven regions of the United States which shall be established by the Secretary on the basis of the production of honey in the different areas of the country;

(B) two members who are handlers of honey appointed from nominations submitted by the Committee from recommendations made by industry organizations representing handler interests;

(C) two members who are either importers or exporters, of which at least one shall be an importer, appointed from nominations submitted by the Committee from recommendations by industry organizations representing importer and exporter interests;

(D) one member who is an officer or employee of a honey marketing cooperative appointed from nominations submitted by the Committee; and

(E) one member selected by the Secretary from the general public.

The Committee shall also submit nominations for an alternate for each member of the Honey Board described in subparagraphs (A) through (D), and the Secretary shall appoint an alternate for the member described in subparagraph (E). Such alternates shall be appointed in the same manner as members are and shall serve only whenever the member is absent from a meeting or is disqualified. However, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in subparagraph (A) or as an alternate to such producer.

(3) Members of the Honey Board shall serve for three-year terms with no member serving more than two consecutive three-year terms except that the initial appointments to the Honey Board shall be staggered with an equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(4) In the event any member of the Honey Board ceases to be a member of the category of members from which the member was appointed to the Honey Board, such person shall be automatically replaced by an alternate, except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

(5) The members of the Honey Board shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Honey Board.

(6) The powers and duties of the Honey Board shall be to—

(A) administer any order, issued by the Secretary under this chapter, in accordance with

its terms and provisions and consistent with the provisions of this chapter;

(B) prescribe rules and regulations to effectuate the terms and provisions of such an order;

(C) receive, investigate, and report to the Secretary, accounts of violations of such an order;

(D) make recommendations to the Secretary with respect to amendments which should be made to such order; and

(E) employ a manager and staff.

**(d) Budget; administration of order**

The Honey Board shall prepare and submit to the Secretary, for the Secretary's approval, a budget (on a fiscal period basis) of its anticipated expenses and disbursements in the administration of the order, including probable costs of research, promotion, and consumer information.

**(e) Assessment; collection; rate; exemption; effect of exemption on referendum voting status**

(1) The Honey Board shall administer collection of the assessment provided for in this paragraph to finance the expenses described in subsections (d) and (f) of this section. The assessment rate shall be \$0.01 per pound, with payment to be made in the manner described in section 4608 of this title.

(2)(A) Honey that is consumed at home by the producer or importer or donated by the producer or importer to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sold shall be exempt from assessment under the order, except that donated honey that later is sold in a commercial outlet by a donee or a donee's assignee shall be subject to assessment on such sale.

(B)(i) A producer, producer-packer, or importer who produces or imports during any year less than 6,000 pounds of honey shall be eligible for an exemption in such year from paying an assessment on honey such person distributes directly through local retail outlets, as determined by the Secretary, during such year.

(ii) In order to claim an exemption under this subparagraph, a person shall submit an application to the Honey Board stating the basis on which the person claims the exemption for such year.

(iii) If, after a person claims an exemption from assessments for any year under this subparagraph, such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Honey Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

(3) If a producer, producer-packer, or importer does not pay any assessments under this chapter due to the applicability to such person of the exemptions from assessments provided in paragraph (2), then such producer, producer-packer, or importer shall not be considered a producer or importer for purposes of voting in any referendum conducted under this chapter during the period the person's exemption from all assessments is in effect.

**(f) Funds; use of; reimbursement; Secretary**

Funds collected by the Honey Board from the assessments shall be used by the Honey Board for financing research, promotion, and consumer information, other expenses as described in subsection (d) of this section, such other expenses for the administration, maintenance, and functioning of the Honey Board as may be authorized by the Secretary, any reserve established under section 4607(5) of this title, and those administrative costs incurred by the Department of Agriculture pursuant to this chapter after an order has been promulgated under this chapter. The Secretary shall be reimbursed from assessments collected by the Honey Board for any expenses incurred for the conduct of referenda.

**(g) False or unwarranted claims or statements**

No promotion funded with assessments collected under this chapter may make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product.

**(h) Influencing governmental policy or action**

No funds collected through assessments authorized by this chapter may, in any manner, be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this chapter.

**(i) Plans or projects; contracts**

The Honey Board shall develop and submit to the Secretary, for approval, plans for research, promotion, and consumer information. Any such plans or projects must be approved by the Secretary before becoming effective. The Honey Board may enter into contracts or agreements with the approval of the Secretary for the development and carrying out of research, promotion, and consumer information, and for the payment of the cost thereof with funds collected pursuant to this chapter.

**(j) Books and records; reports**

The Honey Board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

**(k) Honey Board; property interests**

Any patent on any product, copyright on any material, or any invention, product formulation or publication developed through the use of funds collected by the Honey Board shall be the property of the Honey Board. The funds generated from any such patent, copyright, invention, product formulation, or publication shall inure to the benefit of the Honey Board.

(Pub. L. 98-590, §7, Oct. 30, 1984, 98 Stat. 3117; Pub. L. 101-624, title XIX, §§1983, 1984(a), Nov. 28, 1990, 104 Stat. 3905.)

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101-624, §1983(1)(B), (C), in concluding provisions, substituted “submit nomina-

tions for an alternate" for "nominate an alternate or alternates" and inserted at end "However, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer described in subparagraph (A) or as an alternate to such producer."

Subsec. (c)(2)(C). Pub. L. 101-624, §1983(1)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: "two members who are importers appointed from nominations submitted by the Committee from recommendations made by industry organizations representing importer interests;"

Subsec. (c)(4). Pub. L. 101-624, §1983(1)(D), inserted before period at end " , except that if, as a result of the adjustment of the boundaries of the regions established under paragraph (2)(A), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed".

Subsec. (e)(1). Pub. L. 101-624, §1984(a)(1), substituted new second sentence for "For the first year in which the plan is in effect, the assessment rate shall be \$0.01 per pound, with payment to be made in the manner described in section 4608 of this title. After the first year, the Honey Board may submit to the Secretary a request for an increase in the assessment rate not to exceed 0.5 cent per year, but at no time may the total assessment rate exceed \$0.04 per pound."

Subsec. (e)(2), (3). Pub. L. 101-624, §1984(a)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: "A producer or producer-packer who produces, or handles, or produces and handles less than six thousand pounds of honey per year or an importer who imports less than six thousand pounds of honey per year shall be exempt from the assessment. In order to claim such an exemption, a person shall submit an application to the Honey Board stating that their production, handling, or importation of honey shall not exceed six thousand pounds for the year for which the exemption is claimed."

Subsec. (k). Pub. L. 101-624, §1983(2), added subsec. (k).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4602, 4608, 4611 of this title.

### § 4607. Permissive terms and provisions

On the recommendation of the Honey Board, and with the approval of the Secretary, an order issued pursuant to this chapter may contain one or more of the following provisions:

(1) Providing authority to exempt from the provisions of the order honey used for exporting and providing authority for the Honey Board to require satisfactory safeguards against improper use of such exemption.

(2) Providing that in a State with an existing marketing order with respect to honey, the objectives of which the Secretary determines are comparable to the program established under this chapter, there shall be paid to the Honey Board as provided in section 4608 of this title that portion of the national assessment which is above the State assessment, if any, actually paid on such honey.

(3) Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

(4) Providing that the Honey Board may convene from time to time working groups drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail

outlets for honey, or other members of the public to assist in the development of research and marketing programs for honey.

(5) Providing for authority to accumulate reserve funds from assessments collected pursuant to this chapter to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years when the production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for one year's operation.

(6) Providing for the authority to use funds collected under this chapter with the approval of the Secretary for the development and expansion of honey and honey product sales in foreign markets.

(7) Providing for terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such an order.

(Pub. L. 98-590, §8, Oct. 30, 1984, 98 Stat. 3119.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4606 of this title.

### § 4608. Collection of assessments; refunds

#### (a) First handler of honey

Except as provided by subsections (c), (d), (e), and (i) of this section, the first handler of honey shall be responsible for the collection from the producer, and payment to the Honey Board, of assessments authorized by this chapter.

#### (b) Records

The first handler shall maintain a separate record on each producer's honey so handled, including honey owned by the handler.

#### (c) Time for payment; remission

The assessment on imported honey and honey products shall be paid by the importer at the time of entry into the United States and shall be remitted to the Honey Board.

#### (d) Loan and loan deficiency payments; deduction from disbursement of loan funds or loan deficiency payment made to producer

In any case in which a loan, or a loan deficiency payment is made with respect to honey under the honey price support loan program established under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.], or successor statute, the Secretary shall provide for the assessment to be deducted from the disbursement of any loan funds or from the loan deficiency payment made to the producer and for the amount of such assessment to be forwarded to the Honey Board. The Secretary shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

#### (e) Producer-packers

Producer-packers shall pay to the Honey Board the assessment on the honey they produce.

#### (f) Inspection; books and records

Handlers, importers, and producer-packers responsible for payment of assessments, and per-

sons receiving an exemption from assessments under section 4606(e)(2) of this title, shall maintain and make available for inspection by the Secretary such books and records as are required by the order and file reports at the times, in the manner, and having the content prescribed by the order, so that information and data shall be made available to the Honey Board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of the<sup>1</sup> chapter or of any order or regulation issued pursuant to this chapter.

**(g) Confidentiality of information; disclosure**

All information obtained pursuant to subsection (f) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the Honey Board. Only such information as the Secretary deems relevant shall be disclosed and only in a suit or administrative hearing brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party involving the order with reference to which the information was furnished or acquired. Nothing in this section prohibits—

(1) issuance of general statements based upon the reports of a number of handlers subject to any order, if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary, of the name of any person violating any order issued under this chapter, together with a statement of the particular provisions of the order violated by such person.

**(h) Refunds; submission of statement regarding amount of assessment deducted from loan funds to Honey Board; compliance**

(1)(A) Except as otherwise provided in paragraph (2), any producer or importer may obtain a refund of the assessment collected from the producer or importer if demand is made within the time and in the manner prescribed by the Honey Board and approved by the Secretary; except that, during any year, the amount of refunds made to an importer, as a percentage of total assessments collected from such importer, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Such refund shall be made by the Honey Board in June and December of each year.

(B) A producer that has obtained a honey price support loan under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.], or successor statute, may obtain a refund if the producer has submitted to the Honey Board the statement received under subsection (d) of this section of the amount of assessment deducted from the loan funds and has otherwise complied with this subsection, even though the loan with respect to which the assessment was collected may still be outstanding and final settlement has not been made.

(2) With respect to the order in effect on November 28, 1990, following the referendum on such order required under section 4612(b)(2) of this title, a producer or importer may obtain a refund of an assessment under such order as pro-

vided in paragraph (1) only if the Secretary determines that the proposal to terminate refunds under the order is defeated in such referendum.

**(i) Producer liability to Honey Board for payment of assessment**

If a first handler or the Secretary fails to collect an assessment from a producer under this section, the producer shall be responsible for the payment of the assessment to the Honey Board.

(Pub. L. 98-590, §9, Oct. 30, 1984, 98 Stat. 3120; Pub. L. 101-624, title XIX, §1984(b), Nov. 28, 1990, 104 Stat. 3906; Pub. L. 102-237, title VIII, §807(1), Dec. 13, 1991, 105 Stat. 1883.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in subsecs. (d) and (h)(1)(B), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1991—Subsec. (h)(1)(A). Pub. L. 102-237 inserted “to” before “an importer”.

1990—Subsec. (a). Pub. L. 101-624, §1984(b)(1), inserted reference to subsec. (i) of this section.

Subsec. (d). Pub. L. 101-624, §1984(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “In any case in which a loan is made with respect to any honey under the Honey Loan Price Support Program, the Secretary shall provide that the assessment shall be deducted from the proceeds of the loan and that the amount of such assessment shall be forwarded to the Honey Board. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.”

Subsec. (f). Pub. L. 101-624, §1984(b)(3), inserted “, and persons receiving an exemption from assessments under section 4606(e)(2) of this title,” after “payment of assessments”.

Subsec. (h). Pub. L. 101-624, §1984(b)(4), designated existing provisions as par. (1)(A); substituted “Except as otherwise provided in paragraph (2), any” for “Any”, “an importer” for “to importers”, and “from such importer” for “from importers”; added subpar. (B); and added par. (2).

Subsec. (i). Pub. L. 101-624, §1984(b)(5), added subsec. (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4606, 4607, 4612 of this title.

**§ 4609. Petition and review**

**(a) Filing of petition; hearing**

Any person subject to an order may file, within a period prescribed by the Secretary, a written petition with the Secretary, stating that such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon such petition which shall be final, if in accordance with law.

**(b) District court; jurisdiction; review; rulings**

The district courts of the United States in any district in which such person is an inhabitant,

<sup>1</sup> So in original. Probably should be “this”.

or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 4610 of this title.

(Pub. L. 98-590, § 10, Oct. 30, 1984, 98 Stat. 3121.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4610a of this title.

### § 4610. Enforcement

#### (a) District courts; jurisdiction; Attorney General

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation issued under this chapter. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. Nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of any such plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing such violations.

#### (b) Civil penalties; notice and hearing; review; courts of appeals; cease and desist orders; failure to obey; Attorney General

(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and

desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2) of not more than \$500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 98-590, § 11, Oct. 30, 1984, 98 Stat. 3122.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4609, 4610a of this title.

### § 4610a. Investigations and power to subpoena

#### (a) In general

The Secretary may make such investigations as the Secretary determines necessary—

(1) for the effective administration of this chapter; or

(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this chapter, or of any order, rule, or regulation issued under this chapter.

#### (b) Power to subpoena

##### (1) Investigations

For the purpose of an investigation made under subsection (a) of this section, the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

##### (2) Administrative hearings

For the purpose of an administrative hearing held under section 4609 or 4610 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena wit-

nesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

**(c) Aid of courts**

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

**(d) Contempt**

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(e) Process**

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

**(f) Hearing site**

The site of any hearings held under section 4609 or 4610 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 98-590, §11A, as added Pub. L. 101-624, title XIX, §1986, Nov. 28, 1990, 104 Stat. 3908; amended Pub. L. 102-237, title VIII, §807(2), Dec. 13, 1991, 105 Stat. 1883.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-237 struck out “section” after “4609 or”.

**§ 4611. Requirements of referendum**

For the purpose of ascertaining whether issuance of an order is approved or favored by producers and importers, the Secretary shall conduct a referendum among those producers and importers not exempt under section 4606(e)(2) of this title who, during a representative period determined by the Secretary, have been engaged in the production and importation of honey. No order issued pursuant to this chapter shall be effective unless the Secretary determines that the issuance of such an order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the honey produced and imported during the representative period. The ballots and other information or reports which reveal, or tend to reveal, the vote of any producer or importer of honey shall be held strictly confidential and shall not be disclosed.

(Pub. L. 98-590, §12, Oct. 30, 1984, 98 Stat. 3123.)

**§ 4612. Suspension and termination**

**(a) Authority of Secretary**

Whenever the Secretary finds that any order issued under this chapter, or any provisions

thereof, obstructs or does not tend to effectuate the declared purpose of this chapter, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

**(b) Referendum; time for conducting by Secretary; alternate referendum conducted by Secretary**

(1) Except as otherwise provided in paragraph (2), five years from the date on which the Secretary issues an order authorizing the collection of assessments on honey under provisions of this chapter, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the order.

(2)(A) In lieu of the first referendum otherwise required to be conducted under paragraph (1) for the order in effect on November 28, 1990, the Secretary shall conduct a referendum to determine if honey producers and importers favor—

(i) the continuation of the order; and

(ii) termination of the authority for producers and importers to obtain a refund of assessments under section 4608(h)(1) of this title.

The referendum shall be conducted at the time the first referendum otherwise required under paragraph (1) would have been conducted, except for the operation of this paragraph.

(B)(i) The Secretary shall terminate such order at the end of the marketing year during which such referendum is conducted, if the Secretary determines that termination of the order is approved or favored by not less than a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

(ii) If the Secretary determines that termination of the authority for producers and importers to receive refunds of assessments under section 4608(h)(1) of this title is favored or approved by a majority of the producers and importers voting in such referendum and that the producers and importers comprising this majority produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum, then the Secretary shall amend such order as necessary to reflect the vote of producers and importers. Such amendment to the order shall become effective on the date it is issued, but in no case more than 180 days after the conduct of such referendum.

**(c) Honey Board; referendum; request**

The Secretary shall hold a referendum on the request of the Honey Board or when petitioned by 10 per centum or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of the order.

**(d) Marketing year; termination or suspension at end of**

The Secretary shall terminate or suspend an order at the end of the marketing year in which a referendum is conducted under subsection (b) or (c) of this section whenever the Secretary determines that such suspension or termination is



avored by a majority of those voting in a referendum and that the producers and importers comprising this majority produce and import more than 50 per centum of the volume of honey produced and imported by those voting in the referendum.

(Pub. L. 98-590, §13, Oct. 30, 1984, 98 Stat. 3123; Pub. L. 101-624, title XIX, §1985, Nov. 28, 1990, 104 Stat. 3907.)

#### AMENDMENTS

1990—Subsec. (b). Pub. L. 101-624, §1985(a), designated existing provisions as par. (1), substituted “Except as otherwise provided in paragraph (2), five” for “Five” and “termination” for “continuation, termination,” and added par. (2).

Subsec. (d). Pub. L. 101-624, §1985(b), substituted “an order” for “such order”, inserted “in which a referendum is conducted under subsection (b) or (c) of this section” after “marketing year”, and struck out “of the order” before “is favored by”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4608 of this title.

### CHAPTER 78—AGRICULTURAL PRODUCTIVITY RESEARCH

#### §§ 4701 to 4710. Repealed. Pub. L. 101-624, title XVI, §1620(a), Nov. 28, 1990, 104 Stat. 3734

Section 4701, Pub. L. 99-198, title XIV, §1461, Dec. 23, 1985, 99 Stat. 1562, provided definitions for chapter.

Section 4702, Pub. L. 99-198, title XIV, §1462, Dec. 23, 1985, 99 Stat. 1563, set forth Congressional findings.

Section 4703, Pub. L. 99-198, title XIV, §1463, Dec. 23, 1985, 99 Stat. 1563, set forth purposes of chapter.

Section 4704, Pub. L. 99-198, title XIV, §1464, Dec. 23, 1985, 99 Stat. 1564, related to information study.

Section 4705, Pub. L. 99-198, title XIV, §1465, Dec. 23, 1985, 99 Stat. 1564, authorized research projects to promote purposes of chapter.

Section 4706, Pub. L. 99-198, title XIV, §1466, Dec. 23, 1985, 99 Stat. 1565, related to coordination of projects.

Section 4707, Pub. L. 99-198, title XIV, §1467, Dec. 23, 1985, 99 Stat. 1565, required reports to Congress.

Section 4708, Pub. L. 99-198, title XIV, §1468, Dec. 23, 1985, 99 Stat. 1565, authorized agreements with other expert entities.

Section 4709, Pub. L. 99-198, title XIV, §1469, Dec. 23, 1985, 99 Stat. 1565, related to dissemination of data.

Section 4710, Pub. L. 99-198, title XIV, §1470, Dec. 23, 1985, 99 Stat. 1566, authorized appropriations to carry out chapter.

#### EFFECTIVE DATE

Pub. L. 99-198, title XIV, subtitle C (§§1461-1471), §1471, Dec. 23, 1985, 99 Stat. 1566, which provided that this chapter was effective Oct. 1, 1985, was repealed by Pub. L. 101-624, title XVI, §1620(a), Nov. 28, 1990, 104 Stat. 3734.

### CHAPTER 79—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Sec.

- 4801. Congressional findings and declaration of purpose.
- 4802. Definitions.
- 4803. Pork and pork product orders.
- 4804. Notice and hearing.
- 4805. Findings and issuance of orders.
  - (a) Necessary findings.
  - (b) Number of orders in effect at a time.
  - (c) Effective date.
  - (d) Terms and conditions.
- 4806. National Pork Producers Delegate Body.

Sec.

- (a) Establishment and appointment.
- (b) Membership; number of producer members; number of importer members.
- (c) Voting; quorum; votes necessary for decision.
- (d) Term of office.
- (e) Chairman.
- (f) Compensation.
- (g) Nomination of members to National Pork Board; annual meeting; majority vote in person to nominate.
- (h) Duties and functions.
- 4807. Selection of Delegate Body.
  - (a) Nominations.
  - (b) Election; eligibility to vote; notice of election; number of members nominated.
  - (c) Subsequent nominations and elections to be administered by Board; time of election; voting eligibility.
  - (d) Nominating committee; appointment; nomination to fill position for pending election.
- 4808. National Pork Board.
- 4809. Assessments.
  - (a) Collection and remission to Board; persons required to pay.
  - (b) Rate of assessment; increase; waiver of collection of assessment.
  - (c) Distribution and use.
  - (d) Prohibited promotions.
  - (e) Influencing legislation prohibited.
  - (f) Maintenance of books and records; audits.
  - (g) Investment by Board of funds collected.
- 4810. Permissive provisions.
  - (a) Recordkeeping and reporting requirements; incidental and necessary terms and conditions.
  - (b) Availability of information to Secretary and Board; confidentiality; disclosure; issuance of general statement, statistical data, or name of violator of order.
  - (c) Penalty for willful violations.
- 4811. Referendum.
  - (a) Continuation of order.
  - (b) Factors determining continuation; termination of order.
  - (c) Reimbursement for cost.
  - (d) Manner of conducting.
  - (e) Amendment of initial order.
- 4812. Suspension and termination of orders.
  - (a) Authority of Secretary.
  - (b) Referendum to terminate or suspend; eligible voters; requirements for approval; termination or suspension date; one referendum within 2-year period.
  - (c) Termination or suspension not to be considered an order.
- 4813. Refunds.
  - (a) Demand for refund; persons eligible.
  - (b) Form and time within which demand to be made.
  - (c) Payment of refund on submission of satisfactory proof.
- 4814. Petition and review.
- 4815. Enforcement.
  - (a) Jurisdiction of district court; referral of civil actions to Attorney General.
  - (b) Penalties for willful violations; issuance of cease-and-desist orders; judicial review of orders; penalty for failure to obey cease-and-desist order.